

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Biennial Regulatory Review -)
 Amendment of Parts 0, 1, 13, 22,)
 24, 26, 27, 80, 87, 90, 95, 97, and)
 101 of the Commission's Rules to)
 Facilitate the Development and Use)
 of the Universal Licensing System)
 in the Wireless Telecommunications)
 Services.)

WT Docket No. 98-20

To: The Commission

Reply Comments

Radiofone, Inc. (Radiofone), by its attorneys and pursuant to Rule Section 1.415(c) of the Commission's Rules, hereby submits its reply comments in the above-captioned proceeding.

I. There is Little Industry Support for Mandatory Electronic Filing

The Commenters in the above captioned-proceeding have overwhelmingly urged the Commission to (i) delay mandatory implementation of electronic filing in the Universal Licensing System (ULS) past the proposed January 1, 1999 mandatory cut-over date, and (ii) permit the manual filing of applications and other documents in certain circumstances where access to ULS is otherwise not available or the filer does not have the necessary resources at hand to file electronically. See e.g. Comments of AirTouch Communications, Inc. (AirTouch) at 3-4, Comments of Alarm Industry Communications Committee (AICC) at 2-4, Comments of ADT Security Services, Inc. (ADT) at 2-4, Comments of Bell Atlantic Mobile, Inc. (Bell Atlantic) at 6-8, Comments of Century Telephone Enterprises, Inc. (CenturyTel) at 2-4, Comments of Personal Communications Industry Association (PCIA) at 4-5, Comments of Radiofone at 1-3, Comments of SBC Communications, Inc. (SBC) at 6-7, Comments of Small Business in Telecommunications (SBT) at 2, Comments of UTC, The Telecommunications Association (UTC) at 2-3, Comments of WinStar Communications, Inc.

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(WinStar) at 3-5 . Radiofone supports the industry's general sentiment that while the notion of electronic filing will ultimately be beneficial, it is nonetheless premature to require electronic filing for applications until the Commission is able to resolve all of the technical and access issues regarding ULS, such that ULS is compatible with a wide variety of software and hardware, and is easily accessible to all users. Further, ULS should not impose a significant financial burden on any licensee or applicant, merely to facilitate the filing of applications electronically. Moreover, the Commission should recognize that in certain circumstances (e.g., computer crashes, power outages, lack of equipment, etc.), licensees and applicants must be permitted to file paper applications.

ULS, as it is currently designed, appears to be compatible only with those computers utilizing Microsoft's Windows 3.1 and Windows 95. However, many companies have purchased computers that use other mainstream operating systems (e.g., MS DOS, OS/2, Apple Macintosh, Windows NT), which may not be compatible with ULS. To further exacerbate the situation, a substantial number of the newer computers that are attached to Local Area Networks (LANs), now use Windows NT as the operating system, which while visually similar to Windows 95, is radically different in its configuration.¹ This diverse group of operating systems will continue to grow as (i) most computer manufacturers begin installing Microsoft's Windows 98 on new computers, and (ii) the public begins to upgrade existing computers from Windows 3.1 and Windows 95 to Windows 98 in order to take advantage of the enhanced features contained in the Windows 98 operating system. Because ULS may not be compatible with Windows 98 and other operating systems for the foreseeable future, a significant portion of the industry may not be able to make electronic

¹ While ULS is currently not LAN compatible, disconnecting a Windows NT computer from a network to run as a stand-alone workstation, will not be enough if the Windows NT operating system is not compatible with ULS and the Commission's dial-in software.

filings without costly hardware and/or software changes.² Therefore, the Commission should delay full implementation of ULS until this issue is resolved. See Comments of Telecommunications Industry Association (TIA) at 6, Comments of Radiofone at 2-4, Comments of CenturyTel at 2-4, Comments of ADT at 2-4, Comments of AICC at 2-4. See also Comments of Bell Atlantic at 6-7.

Aside from the issue of whether ULS can be made compatible with existing computer hardware and software, several commenters note that converting to compatible hardware and software may be prohibitively expensive, especially for small and medium sized businesses. See Comments of ADT at 3-4, Comments of AICC at 3, Comments of CenturyTel at 3, Comments of Radiofone at 3. These Commenters note that small and even medium sized businesses may not be able to afford the computer hardware and software upgrades necessary to access the ULS system, which cost would be exacerbated if a multitude of workstations must be modified.

Bell Atlantic and PCIA point out that even where applicants have compatible hardware and software, access to ULS may be limited for reasons beyond their control (e.g., a local computer failure, failure of ULS, loss of telephone and/or electric service, etc.), which could be catastrophic in the event of a deadline filing for, e.g., license renewal application. Thus, even though an applicant could be in the process of filing an application electronically, such efforts could be frustrated through no fault of their own. For these reasons, the Commission should retain a manual application filing option.

While Radiofone believes that there should always be an option to manually file applications, if the Commission decides to impose mandatory electronic filings nonetheless,

² Radiofone is not aware of any Commission software that has been designed to be compatible with Apple Computer products. While Apple Computer does not produce a majority of computer products in use, it still has a significant market presence. Radiofone urges the Commission to develop a version of its software that is compatible with Apple computers, especially if its ultimate goal is to streamline its licensing processes and make information universally available to the public.

such filings should not be required for the foreseeable future. As most of the industry has observed, the Commission's January 1, 1999 cut-over date is overly ambitious, especially for a system that has not yet been fully tested in the real world. Until the ULS becomes heavily used, and the data contained therein is verified, the Commission will not be able to determine whether the ULS design is viable, and that the data security is reliable. In this regard, Radiofone urges the Commission to adopt a long-term beta-test, much like it has done for its license databases that are available over the Internet. If it is determined for security reasons that ULS cannot be made accessible from the Internet, then the Commission should at least ensure that it is accessible via an 800 number nationwide, for both application submission and database viewing purposes.

II. License Reinstatement Should be Retained.

Many commenters oppose the Commission's proposal to eliminate license reinstatement for the private radio services, see Comments of ADT at 8, Comments of AICC at 8-9, Comments of CenturyTel at 11, Comments of Paging Network (PageNet) at 2,³ Comments of PCIA at 9. And even one commenter, American Mobile Telecommunications Association (AMTA), proposes that license reinstatement be extended to the common carrier services. Comments of AMTA at 5-6. Radiofone agrees and reiterates the importance of retaining the license reinstatement period, especially for the less sophisticated licensees who utilize radio as an adjunct to their businesses and typically are not intimately familiar with the Commission's rules and procedures. Radiofone recognizes that while licensees should be diligent in maintaining their radio assets, it knows first hand, as the provider of telecommunications services, that this is not an easy task, especially for

³ In fact, PageNet proposes that before the Commission terminates a license authorization for non-renewal, it verify with the licensee whether the station is in fact constructed and operating, and if so, whether the licensee desires to renew the license. This procedure would best protect the public interest in order to assure the continuity of necessary radio communications services.

those licensees that do not understand the Commission's procedures and do not have the benefit of counsel to guide them through the Commission's regulatory requirements.

Events occur in the business world which, for whatever reason, prevent the timely filing of a license renewal application. Without the license reinstatement period, many of these private radio licenses would be permitted to inadvertently lapse, thereby resulting in the loss of vital radio communications. The process to reauthorize these radio facilities (assuming that the frequencies are not the subject of an application filing freeze or prior market area auction) would be more costly, in that any shared channel must be frequency coordinated prior to filing a reauthorization application. Further, additional Commission resources would be necessary to process a facilities application and request for special temporary authority to continue station operation since these filings involve full technical information and require verification of antenna structure information. Moreover, the loss of operational authority due to an inadvertent oversight could jeopardize licensee's business operations, especially for companies using radio to ensure the safety of workers, or for efficient operation of equipment.⁴ Thus, for the foregoing reasons, the public interest would be served by maintaining the current license reinstatement program.⁵

⁴ CellNet Data Systems, Inc. (CellNet) supports the Commission's proposal to eliminate the license reinstatement period. Comments of CellNet at 3-4. The basis for CellNet's view is that all licensees must be 100 percent vigilant in meeting their license obligations. While in an ideal world, CellNet's view is admirable, we are not in an ideal world. The automatic termination of a license for the non-filing of a license renewal application is unduly harsh, especially where the spectrum is no longer available for application, thereby resulting in a loss of vital communications services.

⁵ Radiofone also supports the adoption of a license reinstatement program for the commercial mobile and fixed microwave services. Such a program would not extend the 10-year license term, but would merely facilitate the acceptance of a late-filed license renewal application, thereby preventing the inadvertent loss of necessary CMRS and fixed-microwave services to the public. This is especially important for those frequency bands where the Commission has instituted application filing freezes or proposed licensing on a secondary basis in anticipation of future auctions, or has otherwise auctioned spectrum on a market area basis. See Comments of AMTA at 5-6.

III. The Commission Should Maintain a 60-Day Response Period for Part 90 and 101 Application Returns.

The Commission's proposal to reduce, from 60 to 30 days, the time period within which to resubmit returned applications has engendered controversy. A few commenters support the Commission's proposal. See e.g. Comments of PCIA at 9, Comments of ADT at 9, Comments of CenturyTel at 11-12.⁶ However, several licensees in the private services, and PCIA (one of the major frequency coordinators) recognize the impracticality of reducing the application return period to thirty days. Comments of CenturyTel at 11-12, Comments of ADT at 9, Comments of PCIA at 9. Many application returns involve corrections of data (e.g., geographic coordinates, antenna height, ground elevation, etc.) which require frequency coordination. Additionally, where there is a discrepancy between antenna structure information in an application as compared to the Commission's tower database, it may be necessary to file a clearance request with the Federal Aviation Administration (FAA), in order to verify the correct geographic coordinates and ground elevation. Since it is not generally possible to research the data, prepare the necessary filing to obtain FAA clearance, obtain successful frequency coordination, and return the amended application to the Commission prior to expiration of the thirty-day return period, Radiofone urges the Commission to maintain the 60-day return policy currently in effect for the private radio services. To reduce the return period to 30 days, as proposed, would essentially render the

⁶ In the context of the Fixed Microwave Services, Pathnet, Inc. supports the Commission's proposed 30-day application resubmission period as a means to prevent a sudden loss of conditional operating authority as a result of an application dismissal for minor defect. Comments of Pathnet at 3-4. Radiofone agrees that providing a resubmission period will facilitate the provision of continued service, and is therefore in the public interest. However, to the extent that the 30-day period would generally be unattainable, due to prior coordination requirements, Radiofone recommends that the Commission adopt a 60-day standard.

procedure inefficient, especially since the single largest hurdle -- frequency coordination -- may be insurmountable within the 30-day application resubmission period.⁷

IV. The Implementation of ULS Should Not Adversely Affect Licensees' Rights.

Radiofone is a licensee in the 2 GHz band in the Common Carrier Fixed Point-to-Point Microwave Service (CCPPMS). Radiofone shares CenturyTel's concern that the Commission's proposal to codify its informal procedures for applications and other filings in the CCPPMS could result in the loss of licensing rights. Specifically, the Commission has proposed to conform its rules to its current practice, which requires the filing of an application for modification of license to restore an authorization to the status quo ante upon a licensee's determination that authorized modifications will not be implemented. In this regard, the Commission has taken the position that, if an authorized license modification is not implemented, the licensee is left without an authorization of any kind and must reapply for its current license, i.e., the license in existence when modification was applied for. In effect, the underlying station license would be treated as revoked.

Radiofone agrees with CenturyTel that the Commission's position will adversely affect licensee rights,⁸ is incorrect, and is contrary to Section 312 of the Communications Act of 1934, as amended. See Comments of CenturyTel at 12-14. Section 312 of the Act sets forth the procedures which the Commission must follow before it may revoke a license. Under Section 312, a license may only be revoked for misconduct or other wrongdoing by the licensee, and then only after the issuance by the Commission of an order to show cause

⁷ Because of the large influx of applications, the speed of service offered by the frequency coordinators has deteriorated, taking as long as 60 days, if not longer in certain circumstances. In that most coordinators process applications on a first-come, first-served basis, there is no guarantee that application resubmissions will be given priority, in order to meet the Commission's proposed 30-day return window.

⁸ As an example, in the context of the 2 GHz band, an authorized 2 GHz CCPPMS facility could lose its primary licensing status if a proposed license modification (e.g., frequency change) is not implemented. This loss of primary status is significant in that emerging technology licensees are required to relocate 2 GHz facilities with primary status.

why a revocation order should not be issued giving the licensee the opportunity for a hearing. See Section 312(c) of the Act; Capitol Paging, 73 RR2d 1381 (1993); David A. Bayer, 71 RR2d 308 (1992). Because of these considerations, Radiofone urges the Commission to clarify that (i) licensees that do not implement authorized modifications continue to have a license to operate their underlying facilities, as previously authorized; and (ii) any subsequent application that may be required is merely ministerial in nature, and will not result in the loss of primary licensing status or other rights that the licensee enjoyed prior to the grant of its proposed modification.

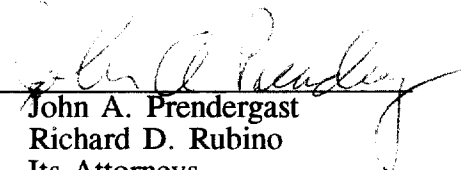
V. Conclusion

In light of the foregoing, it is respectfully requested that the Commission reevaluate ULS in order to ensure that licensees and applicant's are not prejudiced by the system.

Respectfully submitted,

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